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April 13, 2012

CECW–CE, Tammy Conforti
U.S. Army Corps of Engineers
441 G Street, Northwest
Washington, DC 20314–1000

Docket Number COE-2010-0007 - Comments on Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls

Dear Ms. Conforti:

The California Department of Water Resources (DWR) appreciates this opportunity to provide the U.S. Army Corps of Engineers (USACE) with comments on your revised proposal to update the process for requesting a variance from vegetation standards for levees and floodwalls published February 17, 2012 (2012 Proposal). These comments supplement those submitted by DWR jointly with the California Department of Fish and Game (CDFG) on April 15, 2010 (2010 Comments), regarding a similar USACE proposal published on February 9, 2010 (2010 Proposal). Our 2010 Comments also addressed issues raised by the USACE's ETL 1110-2-571 (ETL) "Guidelines For Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures" adopted April 10, 2009. Because the two USACE proposals are nearly identical in key respects, these comments attach and incorporate our 2010 Comments (Exhibit A). These comments also discuss the USACE's November 29, 2011 memorandum entitled "Policy for Development and Implementation of System-Wide Improvement Frameworks (SWIF)" (SWIF Policy) which is referenced at several locations in the 2012 Proposal.

Our 2010 Comments outlined a number of key problems with the 2010 Proposal. Among the most significant were: the cumbersome application requirements proposed by USACE were unnecessary and likely to preclude the submission of variance requests in many situations; the proposed standards for variance approval were vague and open-ended; and multiple levels of USACE approval were required with no meaningful potential for interaction by the applicant, particularly regarding variance disapprovals at one or more intermediate USACE levels. The 2010 Comments also describe legal deficiencies in both the 2010 Proposal and the ETL, particularly regarding the lack of adequate environmental documentation and failure to follow necessary procedures under the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA).

Since 2010, DWR and other stakeholders have engaged USACE through exchange of correspondence and in discussions to address the problems with the 2010 Proposal. DWR also took the initiative to develop and propose to USACE an alternative variance approach that was intended to generate a meaningful dialog which could have led to joint formulation of a workable variance option. Unfortunately, however, to date those communications have not resulted in resolution of key areas of concern, as detailed in this response to the 2012 Proposal.

At a fundamental level, USACE has not responded to the scientific and engineering basis underlying DWR's conclusion that, in most circumstances, levee vegetation is at most a minimal risk factor and that vegetation often provides public safety benefits. USACE also continues to consider the issue in an economic vacuum, largely disregarding the costs that would be imposed by its vegetation policy and the resulting diversion of limited resources from more pressing public safety problems. Throughout the 2012 Proposal, the desirability of removing vegetation is simply assumed, and levees without vegetation serve as the baseline for the proposed analysis. No benefit is demonstrated for this substantial investment. DWR considers this approach to be fundamentally flawed, ignoring available scientific information, wasting limited resources, and likely leading to faulty, truncated engineering evaluations that increase rather than decrease public safety risks.

Further, USACE inaccurately attempts to portray the vegetation issue as being limited to the PL 84-99 context and being adequately addressed by the variance process. Several variance applications have subsequently been submitted under the procedures described in the 2010 Proposal, most significantly an application by the Sacramento Area Flood Control Agency (SAFCA) regarding the Natomas Levee Improvement Program (NLIP). The SAFCA variance application for NLIP, which cost over $300,000 to prepare and which was denied by USACE in significant part, demonstrated the validity of many of the concerns raised in our 2010 Comments. Many maintaining agencies have been forced to significantly alter planned levee improvement actions in light of the ETL and 2010 Proposal, further demonstrating some of the detrimental aspects of that proposal. Exhibit B describes some of these experiences since 2010 with the practical application of the ETL under the 2010 Proposal.

Since 2010, DWR has also been preparing the Central Valley Flood Protection Plan (CVFPP) and associated Program Environmental Impact Report (PEIR) under the California Environmental Quality Act (CEQA). The CVFPP is a critical document intended to guide California's participation (and to influence federal and local participation) in managing flood risk along the Sacramento River and San Joaquin River systems. The CVFPP proposes a State Systemwide Investment Approach (SSIA) as its proposed vision for sustainable, integrated flood management in areas currently protected by facilities of the State Plan of Flood Control (SPFC). A public review draft of the CVFPP was issued in December 2011, and the draft CVFPP PEIR was released

for public comment on March 6, 2012. Comments have been submitted by a number of public agencies on the CVFPP, and comments currently are due on the CVFPP PEIR on April 20, 2012. The current draft of the CVFPP, including all attachments and related materials that have been released as of the date of this letter, is included as Exhibit C, and a copy of the March 6, 2012 draft CVFPP PEIR is included as Exhibit D. We have encouraged USACE to participate in these processes, since the CVFPP is anticipated to serve as the principal basis for a variance in the California Central Valley. Our current understanding is that USACE does plan to comment on both of these documents within the requested time frame.

As part of the CVFPP, DWR has proposed a levee Vegetation Management Strategy (VMS) that would retain all vegetation on the waterside slope of levees up to a line 20 feet below the levee crown (other than vegetation presenting an unacceptable threat, which would be removed), and that would limit vegetation management elsewhere to measures necessary to provide visibility for inspection and accessibility for maintenance and floodfight. To further accommodate the USACE's variance policy, DWR is also proposing a Life Cycle Management (LCM) component of the VMS that would limit the recruitment of replacement trees on the upper waterside slope, crown and landside of levees, which over time would gradually eliminate woody vegetation in those areas. Despite the fact that resource management agencies and environmental interests have expressed concerns with this LCM component, DWR retained it as a rational approach toward levee vegetation management and as a basis for an anticipated variance application. It should be noted that the draft CVFPP PEIR concludes that, even with the issuance of a USACE variance accepting as sufficient the proposed VMS and LCM, potentially significant and unavoidable impacts to biological resources would occur (among other impacts).

Also, as discussed below, the 2012 Proposal would still preclude variances on those portions of the levee system that are not "overbuilt" with respect to an undefined minimum prism. As USACE is aware, this situation is present for most of the levee system in the California Central Valley, and predominantly reflects the condition in which these levees were transferred from USACE responsibility and control in the 20th century. This limitation will have the practical effect of requiring vegetation removal, without any possibility for a variance, for most of the Central Valley levee system. While DWR recognizes the administrative convenience for USACE of such a rule requiring vegetation removal wherever the levees are not overbuilt, DWR also considers the approach to be flawed from a scientific and engineering standpoint and likely to result in decisions that will decrease, rather than increase, public safety in most situations.

The costs of strict ETL compliance would far exceed all of the currently available bond funds, effectively precluding all other levee improvement initiatives for the foreseeable future. Estimates of the cost of strict ETL compliance, with and without a variance, are

described in the "Fiscal Impact Report of U.S. Army Corps of Engineers' Vegetation Management Standards and Vegetation Variance Policy for Levees and Flood Walls," (DWR 2010) included in Exhibit E. Those costs are estimated at $7.5 billion for full ETL compliance, and $6.5 billion for ETL compliance through a variance. These costs would provide almost no benefit in return. The draft CVFPP PEIR also concludes that strict compliance with the ETL would result in massive habitat losses that would likely be unmitigable. The National Marine Fisheries Service (NMFS) has expressed a similar concern. In a letter dated April 2, 2012 to the Central Valley Flood Protection Board commenting on the public draft CVFPP, the NMFS Central Valley Office stated, in part, "[a]ny large scale removal or significant net loss of riparian vegetation as compared to baseline conditions will not be mitigable. This situation could result in permitting difficulties which leads to project delays and increased costs. The potential for jeopardy biological opinions also exists." A more detailed evaluation of potential impacts, as well as a copy of the NMFS letter, is contained in Exhibit F. Because of the lack of demonstrable reduction in levee integrity from the presence of woody vegetation and the prohibitive economic and environmental costs that would result, the draft CVFPP PEIR indicates that California does not anticipate conforming under any reasonable scenario to the ETL.

The public draft CVFPP notes in Section 4 that compatibility between the State levee vegetation management strategy and USACE vegetation policy is potentially achievable when framed in the context of long-term life cycle management coupled with a practicable variance for lower waterside vegetation. From a flood threat perspective, lower waterside vegetation rarely presents an unacceptable threat to levee integrity. However, lower waterside slope vegetation more typically provides beneficial functions, such as slowing near shore water velocities and holding soil in place to reduce erosion. Dense riparian brush provides the greatest erosion protection and least levee safety threat. Larger woody vegetation helps stabilize levees through extensive root systems.

In consideration of the above, DWR further states in Section 4 of the CVFPP its belief that the best path toward State-USACE vegetation policy compatibility is through a sufficiently flexible systemwide variance process consistent with the State's levee vegetation management strategy that can supplement, if necessary, the existing vegetation variance for waterside levee slope vegetation (per USACE letter dated August 3, 1949). Removal of woody vegetation on the lower waterside levee slope that does not pose an unacceptable threat to levee integrity will be deferred indefinitely to allow for development of new information, tools, and techniques that can expand future options for mutually acceptable treatment of lower waterside levee slope vegetation.

In recent statements, including legal briefs and declarations submitted to the federal District Court for the Eastern District of California in Friends of the River, et al v. USACE, et al., No. 2:11-cv-01650 (FOR Litigation), USACE has attempted to emphasize what it characterizes as the "voluntary" nature of compliance with the ETL,

given the fact that one option is for maintaining agencies to forgo PL 84-99 rehabilitation assistance. First, as demonstrated by some of the practical experiences discussed in Exhibit B, the potential loss of PL 84-99 rehabilitation assistance has not been the only effect of the ETL, and USACE has been applying the ETL in a number of other contexts which significantly impact project implementation. Moreover, DWR considers USACE's stance toward PL 84-99 eligibility to be inappropriate and legally problematic. PL 84-99 rehabilitation assistance, when it is available, is important for levee maintaining agencies. Elimination of this assistance will reduce the ability of levee maintaining agencies to address flood damage and will have the practical effect of increasing flood risks behind federal levees. Eliminating eligibility for assistance on the basis of unsupported concerns regarding levee vegetation is arbitrary and a misapplication of PL 84-99.

DWR's 2010 Comments also described the available science regarding the relationship of vegetation and levee safety. They explained how other levee failure mechanisms (or risk factors), such as underseepage, through-seepage, slope and structural instability, erosion, and deep rodent burrows, have been demonstrated to have significantly greater adverse effects on levee integrity and public safety. Science has shown that woody vegetation has the potential to increase or reduce risk, depending on a variety of factors, and DWR believes that it is appropriate to characterize woody vegetation as only a "potential risk factor" that should be considered relative to unequivocal risk factors. One of the findings of DWR's *Flood Control System Status Report* (FCSSR), included in Exhibit C, is that although risk factors such as seepage, stability, and erosion were rated as medium to high relative threats, levee vegetation was rated as a low threat to levee integrity; this is consistent with the fact that no documented levee failures in California have ever been attributed to vegetation. During the past two years, substantial research has also been done on the potential effects of vegetation on levees. That research has generally confirmed the conclusion in DWR's 2010 Comments that vegetation poses minimal risk in most situations. Exhibit G supplements the summary of scientific research contained in the 2010 Comments with these more recent results described in the California Levee Vegetation Research Program (CLVRP) "Information Circular No. 2: Summary of Research Completed to Date," December 12, 2011. Exhibit H includes a summary prepared by the CLVRP on "California Future Research Needs/Priorities," December 13, 2011.

The efforts by DWR and others to address the concerns underlying USACE's adoption of the ETL, and to present a meaningful alternative, have involved substantial expenditures of funds and the attention of agency personnel. It is with this background that DWR must express its disappointment with USACE's general failure to respond to the 2010 Comments (as well as to similar comments made by dozens of other maintaining entities throughout the Western United States), and the lack of a meaningful response by USACE to the substantial efforts made by DWR and others to reach a collaborative solution.

These efforts at collaboration have been further impaired by USACE's withdrawal in November 2011 from participation in the California Levees Roundtable. DWR is also deeply concerned with various representations made by the Department of Justice to the Court in the FOR Litigation regarding these matters, which DWR considers to be misleadingly incomplete and inaccurate in key respects. This hardening of USACE's stance is having the practical effect of limiting DWR's options and forcing a reconsideration of DWR's to-date collaborative approach.

The following comments first summarize how USACE's 2012 Proposal fails to correct the problems presented by the 2010 Proposal and does not set forth a workable variance process. We next explain how the SWIF Policy, which contains several superficially appealing elements, fails to provide a meaningful solution since the policy only addresses PL 84-88 eligibility, and USACE is not proposing to establish it as a reliable, independent pathway to a variance from the ETL. Comments regarding certain details of the 2012 Proposal are then summarized, and discussed in greater depth in Exhibit I.

As should be apparent from our comments, DWR is unequivocally opposed to strict application of the ETL and USACE's failure to propose a meaningful pathway for avoiding the resulting harms.

THE 2012 PROPOSAL HAS FAILED TO CORRECT THE PROBLEMS PRESENTED BY THE 2010 PROPOSAL, AND DOES NOT SET FORTH A WORKABLE VARIANCE PROCESS

Despite the extensive comments filed by DWR and others in 2010, the 2012 Proposal has not adequately addressed the substance of the key issues previously raised. As a result, DWR's 2010 Comments remain applicable to the current proposal. In the interim period, DWR had also proposed specific draft alternative variance language that could have produced a more workable variance process, but other than adopting a few minor wording changes based on DWR's proposals, USACE has not addressed any of the fundamental deficiencies. As a result, the 2012 Proposal still creates an unworkably difficult, uncertain and lengthy process that will inhibit levee maintaining agencies from applying for a variance. It does not provide a useful basis for addressing the problems that would result in California from the application of the ETL. We therefore incorporate our previous comments and only highlight the most serious, continuing, deficiencies below.

Lack of Regional Variances. The previous variance process under ER-500-1-1 and EP 500-1-1 (2001) authorized the issuance of regional variances. The existing variance for most of the levees in the Central Valley of California is at a regional scale. However, under the 2012 Proposal, no regional variances would be allowed, just localized ones. This is non-compliant with the requirements of Section 202(g) of the

Water Resources Development Act of 1996, which directs the Secretary to develop guidelines that "address regional variations in levee management and resource needs." This new small-scale variance requirement will make it procedurally burdensome to re-establish the pre-existing level of on-the-ground variances, or to obtain new variances for areas not previously covered. Multiple applications will be required, which will drastically reduce the potential economies of scale achieved by the former regional variance approach. Moreover, this small-scale variance approach will result in a corresponding piecemealing of the review of public safety, economic, and environmental effects. It would also impair the Corridor Management Strategy that is being developed by DWR and others as part of the CVFPP, which seeks to refine and expand a regional, wholistic approach to flood management planning and permitting.

Predetermination of the Geographic Scope of Potentially Available Variances to Exclude Levee Reaches that are not "Overbuilt." The 2012 Proposal also indicates at several locations that variances are not anticipated to be issued in situations where the existing levee is smaller than the design levee "prism." As USACE is aware, and as documented in the FCSSR (included in Exhibit C), this condition exists on most of the levees in the Central Valley (and in most circumstances existed in the 20th Century when USACE transferred responsibility for the system). Including such a limitation accordingly inhibits or precludes variances for most of the levees in the system, and will predictably lead to large scale vegetation removal having environmental and other effects that USACE has not adequately considered. Although DWR agrees that these pre-existing engineering deficiencies need to be addressed, DWR considers the resolution of these deficiencies to be largely independent of the question of appropriate levee vegetation. In fact, removing vegetation from underbuilt levees as USACE suggests would likely increase safety risks by eliminating the erosion-reduction benefits of the vegetation.

Significant Cost and Other Obligations for Maintaining Entities. Under the 2012 Proposal, significant costs will still be incurred in the variance process. In addition, the levee maintainer must still accept responsibility for the costs of vegetation removal, mitigation and other environmental requirements. In many situations, this will simply be unaffordable and serve as an absolute bar to seeking a variance. Furthermore, as discussed in Exhibit E, the public safety benefit of ETL compliance or PGL compliance would be only a small percentage of the cost. The ETL and PGL effectively require levee maintaining agencies to waste their limited resources.

Multiple USACE Review Steps that are Biased Toward Variance Denial. The 2012 Proposal retains the previously proposed sequence for obtaining a variance that includes multiple review steps within USACE, which is both burdensome and lacks clear appeal opportunities and a defined appeal process. DWR had made a number of specific proposals regarding this process in its alternative variance drafts, which have been rejected. Apart from changing the terminology from "accepting or rejecting" to

"endorsing" the request at each of the steps, and making other minor changes in the wording, the underlying process appears to essentially remain the same. Specifically, the failure to "endorse" at any step appears to terminate the process without any interaction with the applicant or right of appeal. The process is therefore biased toward the denial of variances.

Lack of Definite Timelines for USACE Review. In 2010, DWR had also proposed that the variance review process be subject to definite and relatively prompt deadlines, but other than the 90 day limit for the Agency Technical Review, there still are no specified timelines for each step of USACE's internal review. This indefinite timeline will create confusion and uncertainty for the variance applicants.

Burdensome, Excessive and Unclear Application Requirements. The application requirements under the 2012 proposal remain extremely burdensome, and in many situations may be impossible to satisfy. For example, the application needs to include "to-scale, annotated soil profiles, to an appropriate depth but not less than 20 feet below the levee toe" presumably covering the entire footprint of the affected levee system. In most situations this information will be unavailable and not reasonably obtainable. Detailed and fine-grained mapping and drawings are still required even though a variance determination could be made on a much more generic basis in many situations. In particular, DWR believes that the VMS described in the CVFPP provides an approach that does not require detailed information about every portion of the affected system. Instead, the VMS only requires a more detailed engineering evaluation on a focused basis where the particular situation indicates a risk potential that needs to be considered.

Subjective and Open-ended Variance Approval Standards. The approval standards described in the 2012 Proposal remain subjective and open-ended. For example, the 2012 Proposal indicates that variance requests are inappropriate for "any portion of the levee system for which there are reasonable alternatives . . . ." This threshold requirement is vague, unnecessary, likely to hinder potential requests for variances and create confusion in attempts to meet the standard, and open the door to arbitrary determinations by USACE reviewers.

The proposal also requires a hydraulic analysis "assuming worst-case combinations of flow, elevation, hydraulic roughness, duration, and velocity" demonstrating "no increase in water surface elevations for the required range of flows" from changes in channel geometry and roughness (Vol. 77, Fed. Reg., Pg. 9644) (Enclosure 3, Paragraph 5.b.). First, this provision is ambiguous regarding the baseline from which the "no increase" criterion is to be measured, but it appears to refer to a hypothetical ETL-compliant situation. The criterion also ignores the fact that vegetation will by definition increase roughness and decrease the channel cross section, and therefore increase water surface elevations to some degree in most situations. The "no increase" criterion

inappropriately diverts the analysis from the more important question of whether any water surface elevation differences caused by vegetation present unacceptable safety concerns or prevent the design flow from being conveyed at or below the design stage.

The application requirements also state that: "Geotechnical analyses or review must determine that the levee prism is sufficiently buffered from vegetation impacts." The ambiguous nature and scope of this analysis and the vague standard will create confusion in attempts to provide the information and meet the standard and, as with several of the other provisions of the 2012 Proposal, open the door to arbitrary determinations by USACE reviewers.

Failure to Incorporate or Accommodate the Vegetation Management Strategy of the CVFPP. The 2012 Proposal singles out, for particular scrutiny, those portions of levees on the upper third of the waterside slope, the crown, the landside slope, and within 15 feet of the landside toe. While we appreciate that this feature has been changed from the absolute ban on variances in this zone proposed in 2010, the 2012 Proposal continues to press an outdated engineering viewpoint on an issue that DWR believes has already been addressed. Specifically, DWR believes that it has already been demonstrated that fully adequate access for inspections and floodfighting can be provided without the complete removal of woody vegetation as provided in the ETL. Instead of highlighting this zone for special scrutiny and suggesting an increased likelihood of variance denials in these areas, USACE should continue participation in the collaborative process and incorporate (either in a regional variance, or in the ETL itself) the less invasive vegetation removal requirements already being applied in California.

The area highlighted by USACE for special scrutiny generally corresponds to the "vegetation management zone" (VMZ) described in the VMS contained in the CVFPP. The VMS of the CVFPP is based upon DWR's October 2007 "Interim Vegetation Inspection Criteria," which in turn were incorporated into California's Central Valley Flood System Improvement Framework (Framework), adopted on February 27, 2009. The VMS contains two principal components. First is a maintenance protocol that has essentially been carried forward without modification from the Framework. This maintenance protocol involves no vegetation removal other than as necessary for critical safety reasons on the waterside of levees more than 20 feet below the crown. Above that point on the waterside, on the crown, and on the landside of the levee, vegetation is to be removed to provide for visibility and access is described in greater detail in the draft CVFPP.

The VMS also includes an additional component labeled life-cycle management (LCM), which involves focused efforts to ensure that new trees do not become established in the VMZ on SPFC levees. Existing trees not posing an unacceptable safety hazard are allowed to remain, but will not be replaced upon their deaths. Over time, the LCM

component of the VMS will result in the gradual elimination of this large woody vegetation from the VMZ on SPFC levees.

This approach was developed in coordination with USACE, and DWR and other maintaining agencies began undertaking maintenance in accordance with the 2007 interim inspection criteria and the 2009 Framework shortly after their adoption. At this time, based on site inspections through July 2010, all but approximately 15 miles of the SPFC levees are now compliant with this component of the VMS, as documented in the FCSSR, included in Exhibit C. Experience has demonstrated that the inspection and maintenance protocols of the Framework are adequately providing for inspection and floodfighting access.

DWR therefore believes that the VMS in the CVFPP reflects a reliable approach that fully protects public safety while also addressing habitat and other needs. Specifically, as concluded by the Roundtable, access for floodfighting and inspection can be achieved without the complete removal of woody vegetation required by the ETL. Rather than taking a position in the 2012 Proposal at odds with previous evaluations, DWR requests that USACE reengage in the collaborative process and specifically that USACE participate in the ongoing review of the CVFPP and address any remaining concerns with the VMS in that context. Given the work that has already been done and the positive experience over the past several years with the Framework approach, undertaking an expensive and time-consuming variance process in the Central Valley is unnecessary.

Failure to Adequately Consider the Existing Science. The proposal contains several provisions that DWR considers not to adequately consider the current science or reflect a sound approach. For example, roots larger than one half inch are entirely prohibited from entering the levee prism. Also, the "possible pit" from a tree falling over is broadly defined and cannot "encroach" on the levee prism. While this may have superficial appeal, if the ultimate result is the removal of vegetation the effects could be counterproductive. Specifically, tree removal has been found to eliminate perches for predator raptors, and to result in increased grassy vegetation that attracts and supports increased populations of burrowing animals, creating rather than removing a risk.

SINCE THE SWIF POLICY ONLY ADDRESSES PL 84-99 ELIGIBILITY AND IS NOT A RELIABLE, INDEPENDENT PATHWAY TO A VARIANCE, IT FAILS TO CONTRIBUTE TO A SOLUTION

The SWIF Policy fails to contribute to a solution in two important respects. First, the SWIF Policy only addresses PL 84-99 eligibility, rather than the broad range of situations in which USACE has been applying the ETL as described in Exhibit B. The temporary relief from PL 84-99 ineligibility offered by the SWIF Policy does not address these broader problems. Secondly, both the 2012 Proposal and the SWIF Policy make

clear that the SWIF approach is not an independent pathway to a variance from the ETL.

It is clear that the SWIF Policy only provides temporarily-continuing eligibility for PL 84-99 funding, and does not address any other applications of the ETL. Specifically, as demonstrated in Exhibit B, USACE has been applying the ETL in a number of other contexts, such as federal plan formulations and Section 408 reviews, with a much greater impact both environmentally and economically than the comparatively limited application in the PL 84-99 context. It is also clear that the procedures and requirements of the PGL are considered paramount, and that the SWIF Policy does not provide an independent pathway to a variance from the ETL. Indeed, all SWIFs will be encumbered by, and subject to, these procedures and requirements, or to a commitment to full ETL compliance. Given this clearly-stated relationship, the SWIF Policy does not serve to address any of the deficiencies in the PGL described above.

The 2012 Proposal states directly that: "Deviation from the national standards as defined in ETL 1110–2–571 is permitted only through a vegetation variance approved by the HQUSACE LSO via the process described herein" (Vol. 77, Fed. Reg. Pg. 9640, Paragraph 10 (emphasis added)). It further states that: "The process outlined in this memorandum may be implemented as part of a system-wide improvement framework (SWIF) per Paragraph 3.k." *Id.*

The SWIF Policy itself indicates only that it "may complement the vegetation variance request process" and that it "may be useful in development of a vegetation variance request" (SWIF Policy at 8). It is elsewhere made clear that the SWIF Policy does not provide an independent pathway to a variance. ("If required, a vegetation variance request can be part of the SWIF process.")

Enclosures 4 and 5 to the 2012 Proposal are ambiguous and apparently misleading on the question of whether the SWIF Policy is an independent pathway to a variance. Although the PGL and SWIF Policy pathways are separately identified on those enclosures, the text of the PGL makes clear that only the PGL pathway provides for long-term retention of PL 84-99 eligibility without strict ETL compliance. DWR is informed that USACE has been representing to public officials and others that these enclosures are an accurate summary of the 2012 Proposal. Without conforming the text of the 2012 Proposal to the enclosures, these representations are inappropriately misleading.

While the SWIF Policy incorporates a number of features, many of which were originally developed by DWR and which DWR could support if the SWIF Policy were an independent pathway to ETL compliance for all purposes, the fact that the burdensome requirements of the PGL or ETL still apply to a SWIF eliminates any long-term benefit from the SWIF Policy. Moreover, the SWIF Policy fails to address

application of the ETL beyond the PL 84-99 context. As described in Exhibit B, the experiences of the past several years demonstrate that it is this broader application of the ETL in other contexts that created the most significant problems with flood management in California.

ADDITIONAL ISSUES RAISED BY THE 2012 PROPOSAL

We note that no new programmatic environmental documents are being prepared by USACE, such as a programmatic EIS or programmatic ESA consultation, so there will be no way for maintaining agencies to tier their documents and streamline them. Further, as detailed in our 2010 Comments, the lack of environmental analysis to support the ETL and variance policy violates NEPA and the ESA. The policy also does not modify the ETL, the adoption of which also was in violation of NEPA and ESA.

CONCLUSION

The 2012 proposal fails to accomplish the requirement of Section 202(g) of the Water Resources Development Act of 1996, which directed USACE to provide a coherent and coordinated policy for vegetation management for levees that allows for regional variations in levee management and resource needs. DWR and other levee maintaining agencies have invested considerable planning funds and staff time in developing an alternative vegetation management approach that fully protects public safety while avoiding most of the adverse economic and environmental effects of the ETL. That approach, reflected in the Framework and integrated into the draft CVFPP, is already being implemented and has been demonstrated to be a successful solution to the problem. In California at least, instead of continuing with a cumbersome and unworkable variance proposal, USACE should recognize that a resolution has already been accomplished and incorporate that resolution directly into a variance or into revisions to the ETL. Any concerns that USACE may have should be presented directly in the ongoing processes rather than being deferred to an unnecessary and excessively burdensome variance application.

If you have any questions, please do not hesitate to contact me at (916) 653-7007.

Sincerely,

for Mark W. Cowin
Director

Attachments (See attached list.)

cc: (See attached list.)

List of Attachments

Exhibit A: April 15, 2010 DWR/DFG Comment Package

Exhibit B: U.S. Army Corps of Engineers Vegetation Removal Policy Effects on Flood Risk Reduction Projects

Exhibit C: *Public Draft 2012 Central Valley Flood Protection Plan* and Appendices (December 2011) and *Flood Control System Status Report* (FCSSR) December 2011

Exhibit D: *2012 Central Valley Flood Protection Plan Draft Program Environmental Impact Report* (March 6, 2012)

Exhibit E: Benefit and Cost Analysis for ETL or PGL Compliance

Exhibit F: Environmental Consequences of USACE ETL 1110-2-571 Compliance

Exhibit G**:** California Levee Vegetation Research Program (CVLRP): Informational Circular No. 2: Summary of Research Completed to Date (December 12, 2011)

Exhibit H: California Levee Vegetation Research Program (CLVRP): California Future Research Needs/Priorities (December 13, 2011)

Exhibit I: Issues with the U.S. Army Corps of Engineers' February 2012 Vegetation Variance Request Policy and November 2011 Policy for Deployment and Implementation of System-Wide Improvement Frameworks

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Representative Daniel Lungren
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2262 Rayburn House Office Building
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The Honorable Doris Matsui
United States House of Representatives
222 Cannon House Office Building
Washington, DC 20515-0505

The Honorable Thomas McClintock
United States House of Representatives
508 Cannon House Office Building
Washington, DC 20515-0504

The Honorable Gerald McNerney
United States House of Representatives
312 Cannon House Office Building
Washington, DC 20515-0511

The Honorable George Miller
United States House of Representatives
2205 Rayburn House Office Building
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The Honorable Mike Thompson
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231 Cannon House Office Building
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The Honorable Zoe Lofgren
United States House of Representatives
1401 Longworth House Office Building
Washington, D.C. 20515-0516

The Honorable Lois Capps
United States House of Representatives
2231 Rayburn House Office Building
Washington, D.C. 20515-0523

The Honorable Adam Schiff
United States House of Representatives
2411 Rayburn House Office Building
Washington, D.C. 20515-0529

The Honorable Howard L. Berman
United States House of Representatives
2221 Rayburn House Office Building
Washington, D.C. 20515-0528

The Honorable Anna G. Eshoo
United States House of Representatives
205 Cannon House Office Building
Washington, D.C. 20515-0514

The Honorable Karen Bass
United States House of Representatives
408 Cannon House Office Building
Washington, D.C. 20515-0533

The Honorable Janice Hahn
United States House of Representatives
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Washington, D.C. 20515-0536

The Honorable Mike Honda
United States House of Representatives
1713 Longworth House Office Building
Washington, D.C. 20515-0515

The Honorable Jackie Speier
United States House of Representatives
211 Cannon House Office Building
Washington, D.C. 20515-0512

The Honorable Judy Chu
United States House of Representatives
1520 Longworth House Office Building
Washington, D.C. 20515-0532

The Honorable Linda Sanchez
United States House of Representatives
2423 Rayburn House Office Building
Washington, D.C. 20515-0539

The Honorable Laura Richardson
United States House of Representatives
1330 Longworth House Office Building
Washington, D.C. 20515-0537

The Honorable Susan A. Davis
United States House of Representatives
1526 Longworth House Office Building
Washington, D.C. 20515-0553

The Honorable Bob Filner
United States House of Representatives
2428 Rayburn House Office Building
Washington, D.C. 20515-0551

The Honorable Maxine Waters
United States House of Representatives
2344 Rayburn House Office Building
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The Honorable Grace Napolitano
United States House of Representatives
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The Honorable Henry Waxman
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The Honorable Xavier Becerra
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The Honorable Loretta Sanchez
United States House of Representatives
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The Honorable Pete Stark
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The Honorable Lynn Woolsey
United States House of Representatives
2263 Rayburn House Office Building
Washington, D.C. 20515-0506

The Honorable Jim Costa
United States House of Representatives
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Washington, D.C. 20515-0520

The Honorable Joe Baca
United States House of Representatives
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The Honorable Sam Farr
United States House of Representatives
1126 Longworth House Office Building
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The Honorable Lucille Roybal-Allard
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The Honorable Brad Sherman
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The Honorable Barbara Boxer
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The Honorable Diane Feinstein
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